

**BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON DC 20268-0001**

PERIODIC REPORTING )  
(PROPOSAL EIGHT) ) Docket No. RM2017-12

**COMMENTS OF  
ALLIANCE OF NONPROFIT MAILERS**

**(September 18, 2017)**

The Alliance of Nonprofit Mailers (“ANM”) respectfully submits these comments in response to Order No. 4025.

**I. INTRODUCTION AND SUMMARY**

The Commission should keep the existing methodology for calculating the 60 percent ratio between nonprofit and commercial Marketing Mail rates under 39 U.S.C. § 3626(a)(6). Congress adopted the 60 percent ratio in 2000 as a way to protect nonprofit mailers and other preferred mailers from the wide and unpredictable rate fluctuations that had resulted from basing nonprofit rates on nonprofit-specific cost data. In Docket No. R2008-1, after the enactment of the Postal Accountability and Enhancement Act of 2006 eliminated separate subclasses within Standard Mail, the Postal Service proposed to apply the 60 percent statutory ratio on a class average basis as the best way to continue achieving the goals of Section 3626(a)(6). The Postal Service proposal was unopposed by other participants (including commercial users of Standard Mail) in R2008-1, and the Commission adopted it as compliant with Section 3626(a)(6).

The Postal Service has provided no valid justification for the Commission to reverse course by reconstructing regular and enhanced carrier route (“ECR”) mail as pseudo-subclasses of Standard Mail. Regular and ECR mail were eliminated as actual subclasses nearly a decade ago. Class-wide application of the 60 percent ratio is clearly a permissible interpretation of Section 3622(a)(6), as the Postal Service argued and the Commission held in R2008-1. The Commission and the Postal Service have adhered to class-wide application of the ratio for nearly a decade since then.

While the Postal Service is correct that class-wide application of the 60 percent ratio tends to produce lower nonprofit rates than does applying the 60 percent ratio separately to regular and ECR mail, this relationship was evident in 2008, when the Postal Service persuaded the Commission to adopt the class-wide method. The Postal Service rewrites history by suggesting that this effect was unknown in 2008. *Cf.* USPS Petition at 2. Furthermore, the relationship between nonprofit and commercial Marketing Mail rates has been remarkably stable since R2008-1: the cumulative rate increases for commercial and nonprofit Marketing Mail have been nearly identical. Commercial mailers have received essentially the same cumulative rate increases as nonprofits since adoption of the class-wide application of the 60 percent ratio.

By contrast, abandoning the Postal Service’s R2008-1 methodology in favor of Proposal Eight would violate one of the fundamental policies of the 2000 legislation: to protect nonprofit mailers from unpredictable rate fluctuations. Proposal Eight would result in an average price increase of 6.94 percent for ECR nonprofit Marketing Mail and 3.33 percent for regular nonprofit Marketing Mail—in addition to any CPI-based price increases taken under 39 U.S.C. § 3622(d)—and cause the cumulative rate increase for nonprofit

Marketing Mail since R2008-1 to be much higher than for commercial Marketing Mail. See USPS Petition at 5 (table). Even the Postal Service acknowledges that its proposal could produce “rate shock” for nonprofit mailers.

Adoption of the current Postal Service proposal would also make nonprofit price levels more vulnerable to manipulation in the future through changes in classifications, mail preparation requirements, and rate designs. Within recent years, changes in the Domestic Mail Manual—in particular, the implementation and subsequent withdrawal of FSS rates—have shifted billions of pieces from the Carrier Route product to the Flats product and back again. Other changes—e.g., changing piece minimums for Carrier Route Basic Flats or discouraging comailing by reducing the Carrier Route Basic discount—would also shift mail between the proposed pseudo-subclasses, potentially affecting the nonprofit ratio if applied separately to each pseudo-subclass.

## **II. BACKGROUND**

While the impetus for this rulemaking is the Postal Service’s current request that the Commission abandon the Postal Service’s 2008 interpretation of the 60 percent ratio prescribed by 39 U.S.C. § 3626(a)(6), the origins of the issue reach back several decades.

### **A. Rate Preferences For Nonprofit Third-Class Mail Between 1971 And 2000**

The Postal Reorganization Act of 1970, Pub. L. No. 91-375, 84 Stat. 719 (Aug. 12, 1970), required that rates for nonprofit mail and other preferred subclasses cover attributable costs, with the rate increases needed to satisfy this requirement phased in

over a 10-year period (later extended to 16 years). Postal Reorganization Act, 84 Stat. 762-63 (codified at former 39 U.S.C. § 3626(a)), amended, Pub. L. No. 93-328, § 1, 88 Stat. 287 (June 30, 1974); Richard B. Kielbowicz and Linda Lawson, “A Policy History of Selected Preferred Rate Categories: In-County Periodical Rate, Second- and Third-Class Nonprofit Rates, Library Rate,” at 66-73, in PRC Docket No. SS86-1, *Report to Congress: Preferred Rate Study* (June 18, 1986), Appendix A (“Kielbowicz and Lawson”) at 120-26. The institutional costs otherwise born by preferred-rate mail were to be covered by annual appropriations from Congress. *Id.* Preferred-rate subclasses would pay more than attributable cost only if Congress failed to appropriate the necessary revenue-forgone appropriation. *Id.*; see generally S. Rep. No. 106-468, 106<sup>th</sup> Cong., 2d Sess. (Oct. 3, 2000) at 2.

This system worked well for about 20 years. In the early 1990s, however, Congress became increasingly reluctant to appropriate the full amount of the revenue forgone appropriation needed to maintain preferred rates at attributable costs. Annual crises resulted, with the nonprofit rate preference preserved only through 11<sup>th</sup>-hour legislation.

In October 1991, Congress preserved the full rate preference for letter-shaped nonprofit Third-Class Mail for Fiscal Year 1992, but allowed rates for other shapes of nonprofit Third-Class Mail to rise halfway to the full commercial level. Treasury, Postal Service and General Government Appropriations Act, 1992, Pub. L. No. 102-141, Title II, 105 Stat. 842-43 (Oct. 28, 1991).

In the fall of 1992, Congress, making clear that it did not intend to renew the revenue forgone appropriation for most preferred rate categories, urged the Postal

Service and its stakeholders to agree upon a compromise proposal to fund the continuation of rate preferences at a lower level from other postal revenue. The elimination of nonprofit rate preferences was averted only by 11<sup>th</sup>-hour legislation that froze nonprofit Third-Class rates at their existing level for fiscal year 1993. Postal Service Appropriations Act, 1993, Pub. L. No. 102-393, 106 Stat. 1729, 1738 (Oct. 6, 1992), § 201.

The Postal Service, nonprofit mailers, and commercial mailers reached agreement on a legislative compromise in the fall of 1993. Revenue Forgone Reform Act of 1993, Pub. L. No. 103-123, 107 Stat. 1267, 1267-68. The legislation provided that, in lieu of a revenue forgone appropriation, nonprofit Third-Class rates would be phased in over six years to a level at which the resulting average markup over the costs attributable to nonprofit Third-Class mail would be one-half the average markup of commercial Third-class rates over the costs attributable to commercial Third-Class mail (the “50-percent markups rule”). *Id.*, § 704 (amending former 39 U.S.C. § 3626(a)), 107 Stat. 1267-70. The remaining difference between nonprofit and commercial Third-Class was to be recovered from other mail, not a Treasury appropriation. *Id.*, 107 Stat. 1270-71; see *generally* S. Rep. No. 106-468 at 2.

## **B. Replacement Of Reduced Markups With The 60 Percent Ratio In 2000**

The 1993 legislation worked effectively for several years. By the late 1990s, however, the growing volatility and unreliability of the available data on the attributable costs of nonprofit mail and other preferred rate categories began to cause wide and unpredictable fluctuations in preferred rates. See, e.g., R97-1 Op. & Rec. Decis. (May 11,

1998) at ¶¶ 5589-5616 (nonprofit Standard Mail costs);<sup>1</sup> *id.* at ¶¶ 5726-5745 (library rate costs); S. Rep. No. 106-468 at 2-3 (describing “dramatic” and unpredictable rate swings that resulted from changes in estimated attributable costs under 2003 law).

In 2000, as the Postal Service began work on the R2000-1 omnibus rate case, its analysts realized that the fluctuations in reported costs for many preferred rate categories would result in even greater rate fluctuations than in R97-1. To avoid this, the Postal Service and representatives of nonprofit and commercial mailers began negotiations on legislation that would redefine preferred rates in terms of discounts from the corresponding commercial *rates* rather than by calculating reduced markups over attributable costs. This approach would avoid the need to rely on increasingly unreliable data on the attributable costs of the preferred rate subclasses. Agreement among the Postal Service and its stakeholders led to enactment of legislation in October 2000. Pub. L. No. 106-384, 114 Stat. 1460 (Oct. 27, 2000).

For the preferred rate categories of periodical mail and library mail, the approach prescribed by the 2000 legislation was simple. With limited exceptions, the preferred rate for each mailing would be set as nearly as practicable to 95 percent of the corresponding regular rate for a mailing with the same billing determinants. Pub. L. No. 106-384, § 1(c) (codified at 39 U.S.C. § 3626(a)(4)) (nonprofit and classroom publications); *id.*, § 1(e) (codified at 39 U.S.C. § 3626(a)(7)) (library and educational matter); S. Rep. No. 106-468 at 3, 5.

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<sup>1</sup> Third-Class Mail was renamed as Standard Mail in Docket No. MC95-1.

This same approach was not viable for nonprofit Standard Mail, however. Holding weight, zone, presort level and other billing determinants constant, the average rate for nonprofit Standard Mail resulting from the 50 percent markup rule was about 27 percent below the corresponding rate for commercial Standard Mail. Simply discounting each commercial rate element by 27 percent, however, would yield worksharing discounts that were significantly below worksharing cost avoidances. Accordingly, the parties agreed that the rate preference for nonprofit Standard Mail would be redefined in terms of average revenue per piece for the nonprofit subclass. For several reasons, including the lower-cost mail mix of nonprofit Standard Mail, achieving a rate preference of about 27 percent for a mailing with a given set of billing determinants required that the average revenue per piece of each subclass of nonprofit Standard Mail be set about 40 percent below the average revenue per piece of “the most closely corresponding regular-rate subclass.” This alternative approach for Standard Mail became law as well. Pub. L. No. 106-384, § 1(d), 114 Stat. 1461 (codified at 39 U.S.C. § 3626(a)(6)); S. Rep. No. 106-468 at 5.

In agreeing to this approach, the parties negotiating the legislation recognized that the effective average rate preference, holding all billing determinants constant, could drift up and down as the mixes of mail within nonprofit and commercial Standard Mail changed. The parties also recognized that changes in the relative significance of worksharing discounts could have a similar effect. These possibilities were known to all of the major stakeholders, including the Postal Service, nonprofit mailers, and commercial mailers.

The sponsors of the legislation emphasized that one of its primary purposes was to avoid the large and unpredictable rate changes that had occurred under the 1993 legislation. As Cong. John McHugh explained,

The application of the [50 percent markup rule] had some problematic effects and there were significant rate swings because of underlying costs. The ‘one-half mark up rule’ as it was known, made it difficult for the Postal Service and the Postal Rate Commission to alleviate the price effects of cost changes.”

146 Cong. Rec. H9801-02 (Oct. 11, 2000). Cong. Danny Davis expanded on this point:

This year, the U.S. Postal Service admitted that its data did not adequately represent certain categories of nonprofit mail's real costs. The legislation would positively change the approach to setting nonprofit rates. If passed, nonprofit rates would be a percentage of the commercial rates, therefore ending the reliance [on] inaccurate costing figures.

Nonprofit and [commercial] mail costs would always be compiled and counted together, greatly improving the accuracy and reliability of the Postal Service data and stabilizing nonprofit rates.

*Id.* at H9802.

### **C. Reinterpretation Of The 60 Perfect Rule In 2008 After The Elimination of Rate Subclasses**

Between 2000 and 2006, the Commission implemented the 2000 legislation for nonprofit Standard Mail by applying the 60 percent ratio separately to the regular and enhanced carrier route subclasses of regular-rate and nonprofit Standard Mail. See, e.g., R2000-1 Op. & Rec. Decis. (Nov. 13, 2000) at ¶¶ 5553-5556.

Enactment of the Postal Accountability and Enhancement Act of 2006 (“PAEA”), however, required a change of approach. As the Postal Service noted in Docket No. R2008-1, the first general market dominant rate case after PAEA took effect, “subclasses



no longer exist in the new pricing system.” Docket No. R20008-1, USPS Notice of Market-Dominant Price Adjustment (Feb. 11, 2008) at 24.<sup>2</sup> Accordingly, the Postal Service proposed in Docket No. R2008-1 to comply with the 60 percent ratio of Section 3626(a)(6) in that case and future cases by comparing the average revenue per piece from nonprofit Standard Mail as a whole to the corresponding average for regular rate Standard Mail as a whole. This alternative, the Postal Service explained, would approximate the statutory ratio as nearly as practicable:

[S]ection 3626(a)(6) requires that Nonprofit Standard Mail prices be set to achieve an average revenue per piece that is 60 percent of the commercial average revenue per piece. Previously this ratio was calculated at the subclass level. *Since subclasses no longer exist in the new pricing system, the Postal Service has now calculated this ratio at the class level.* The prices set forth in this Notice achieve a revenue per piece ratio of 60.1 percent.

Docket No. R20008-1, USPS Notice of Market-Dominant Price Adjustment (Feb. 11, 2008) at 24-25 (emphasis added).

The Postal Service’s revised interpretation of Section 3622(a)(6) was unopposed by any other participant in the case (including commercial users of Standard Mail).<sup>3</sup> The Commission, in its final decision, approved the Postal Service’s revised approach, finding that applying the 60 percent ratio at the class level instead of the subclass level was “in

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<sup>2</sup> See *also* Order No. 26 in Docket No. RM2007-1 (Aug. 15, 2007) at 76: “[Congress] can be assumed to have intentionally chosen the term ‘product’ in preference to ‘subclass,’ a term that is not defined by the PAEA and, under the new rate setting procedures, is largely an irrelevant artifact.”

<sup>3</sup> See Docket No. R2008-1, DMA-PostCom Comments (March 3, 2008); Valpak Comments (March 3, 2008). The American Catalog Mailers Association did not file comments in R2008-1, and did not challenge the 60 percent methodology in ACR2008.

compliance with this statutory preference.” Order No. 66 in Docket No. R2008-1 (Mar. 17, 2008) at 32.

In the nine years since then, Section 3626(a)(6) has worked just as the drafters and supporters of the 2000 and 2006 legislation intended. Nonprofit mailers have received the protection from unpredictable rate shocks that the 2000 legislation was intended to give preferred rate mailers, and the “predictability and stability in rates” that PAEA was intended to give all mailers, including preferred rate mailers. 39 U.S.C. § 3622(b)(2). Moreover, this stability has not come at the expense of commercial mailers. Although the 2000 legislation was not intended to freeze the relationships between nonprofit and commercial rates regardless of changes in the mail mix of the two kinds of Marketing Mail, the relationship has been remarkably stable since 2008. The average cumulative rate increase for commercial Marketing Mail resulting from each rate case since the R2008-1 change in methodology has been 15.5 percent. For nonprofit Marketing Mail, the cumulative increase has been 15.2 percent, only 0.3 percentage points (and 1.5 percent) less:

**Table 1**

<b>Docket No.</b>	<b>% Change in Rates</b>	
	<b>Standard Mail Commercial</b>	<b>Standard Mail Nonprofit</b>
R2009-2	3.7%	4.5%
R2011-2	1.9%	0.5%
R2012-3	2.4%	-0.7%
R2013-1	2.4%	4.1%
R2013-10	1.6%	2.1%
R2015-4	1.8%	2.7%
R2016-2	0.0%	0.0%
R2016-5	0.0%	-0.1%
R2017-1	0.9%	1.2%
<b>CUMULATIVE</b>	<b>15.5%</b>	<b>15.2%</b>

Source: Library Reference ANM-RM2017-12/1.<sup>4</sup>

**D. The Postal Service's Current Proposal To Abandon Its 2008 Approach**

In its July 31 petition, the Postal Service proposes to repudiate its position in Docket No. R2008-1 by applying 60 percent statutory ratio separately to regular rate and Enhanced Carrier Route ("ECR") mail as if they were still separate subclasses. Because the regular rate and ECR categories of Standard Mail (now Marketing Mail) have not been separate subclasses since the ratemaking changes resulting from PAEA took effect, the Postal Service intends to construct pseudo or synthetic subclasses of Marketing Mail.

The Postal Service proposal, if approved by the Commission, would require an average price increase of 6.94 percent for ECR nonprofit Marketing Mail and 3.33 percent

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<sup>4</sup> The table excludes the exigent rate increase in Docket No. R2013-11 and its later rollback because these offsetting rate changes do not affect the cumulative increase.

for regular nonprofit Marketing Mail, for a total weighted increase of 3.77 percent. These increases would be *in addition to* any increases authorized by 39 U.S.C. § 3622 to offset increases in the Consumer Price Index. USPS Petition at 5. To offset these increases, Proposal Eight would result in a total rate *decrease* of 0.40% for commercial Marketing Mail. Added to the cumulative rate increases on nonprofit and commercial Standard Mail since 2008, Proposal Eight would produce a cumulative increase of 19.6 percent for nonprofit Standard (or Marketing) Mail, 4.6 percentage points or 30.6 percent more than the cumulative increase of 15.0 percent for commercial Standard (or Marketing) Mail during the same period. See Library Reference ANM-RM2017-12/1.

### **III. ARGUMENT**

Since 2000, 39 U.S.C. § 3626(a)(6) has required that Marketing Mail rates be set so that the average revenue per piece from each nonprofit “subclass” equal, “as nearly as practicable,” 60 percent of the average revenue per piece from “the most closely corresponding regular-rate subclass of mail.” In 2008, after the enactment of the PAEA led to the elimination of rate subclasses, the USPS persuaded mailers and the Commission that implementing the 60 percent ratio as closely as practicable required applying the ratio to nonprofit Standard Mail as a whole vis-à-vis commercial Standard Mail as a whole. Now, nine years and many rate increases later, the Postal Service contends that the statutory interpretation it persuaded the Commission to adopt in 2008 violates Section 3626(a)(6), and the interpretation that the Postal Service rejected in 2008 is required after all. The Commission should reject this interpretive somersault.

An agency that departs from a policy, rule or interpretation “must give a reasoned analysis” supporting the change. *American Wild Horse Preservation Campaign v.*

*Perdue*, 805 F.3d 691, 701, 705 (D.C. Cir. 2017); *West Deptford Energy, LLC v. FERC*, 786 F.3d 10, 12, 17, 20 (D.C. Cir. 2014); *LePage's 2000, Inc. v. Postal Regulatory Commission*, 641 F.3d 225, 233 (D.C. Cir. 2011). Moreover, "an agency must also be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). The Postal Service has provided no reasoned basis for abandoning the interpretation of Section 3622(a)(6) proposed by the Postal Service, adopted by the Commission in R2008-1, and relied on by nonprofit mailers since then. Further, the inconsistent interpretation now advanced by the Postal Service would violate several fundamental policies of the 2000 legislation.

(1) The Postal Service's primary justification for abandoning the Commission's existing interpretation of Section 3626(a)(6) is that applying the 60 percent ratio to Marketing Mail as a whole produces lower nonprofit rates than does applying the 60 percent ratio separately to regular and ECR mail. USPS Petition at 2 & n. 5; *id.* at 7-9; Library Reference USPS-RM2017-12/1 (MMPrices16Years.xlsx). This relationship, however, was already well known when the Postal Service proposed (and the Commission adopted) the class average application of the 60 percent ratio in R2008-1. Indeed, the nonprofit-to-commercial revenue-per-piece ratios calculated separately for regular and ECR mail separately have been lower than the ratio calculated at the class average level *every year since 2000*. By the Postal Service's own admission, "the Regular and Enhanced Carrier Route ratios, on their own, have been below the ratio for the class overall" "[t]hroughout the period" since FY2000. USPS Petition at 3. The Postal Service's own data confirm this:

**Table 2**

**USPS Marketing Mail  
Nonprofit-to-Commercial Average Revenue per Piece Ratio  
History, FY 2000 to Docket No. R2017-1**

<b>Year</b>	<b>Regular</b>	<b>Enhanced Carrier Route</b>	<b>Total</b>
FY 2000	61.6%	49.7%	63.6%
FY 2001	60.6%	53.5%	62.8%
FY 2002	59.1%	55.5%	62.4%
FY 2003	59.8%	55.2%	62.0%
FY 2004	60.2%	54.5%	62.2%
FY 2005	60.7%	55.7%	62.3%
FY 2006	60.0%	57.4%	62.4%
FY 2007	59.5%	58.7%	62.0%
FY 2008	58.3%	57.2%	60.7%
FY 2009	56.6%	58.7%	60.0%
FY 2010	57.7%	56.9%	60.4%
FY 2011	57.2%	56.7%	59.4%
FY 2012	56.0%	54.2%	58.2%
FY 2013	56.6%	56.4%	58.7%
FY 2014	57.2%	54.6%	58.9%
FY 2015	56.9%	56.9%	59.0%
FY 2016	56.8%	57.4%	59.2%
R2017-1	57.8%	56.0%	60.0%

Source: Library Reference ANM-RM2017-12/1. Likewise, Valpak, a major user of commercial Standard Mail, specifically noted the same relationship in its comments in the Annual Compliance Review for Fiscal Year 2008. Docket No. ACR2008, Valpak comments (Jan. 30, 2009) at 57, Table 8 (observing that the average revenue per piece for nonprofit Standard Mail in Fiscal Year 2008 was 60.7 percent of the commercial average for Standard Mail as a whole, but 58.3 percent for Standard Mail Regular, and 57.2 percent for Standard Mail ECR).

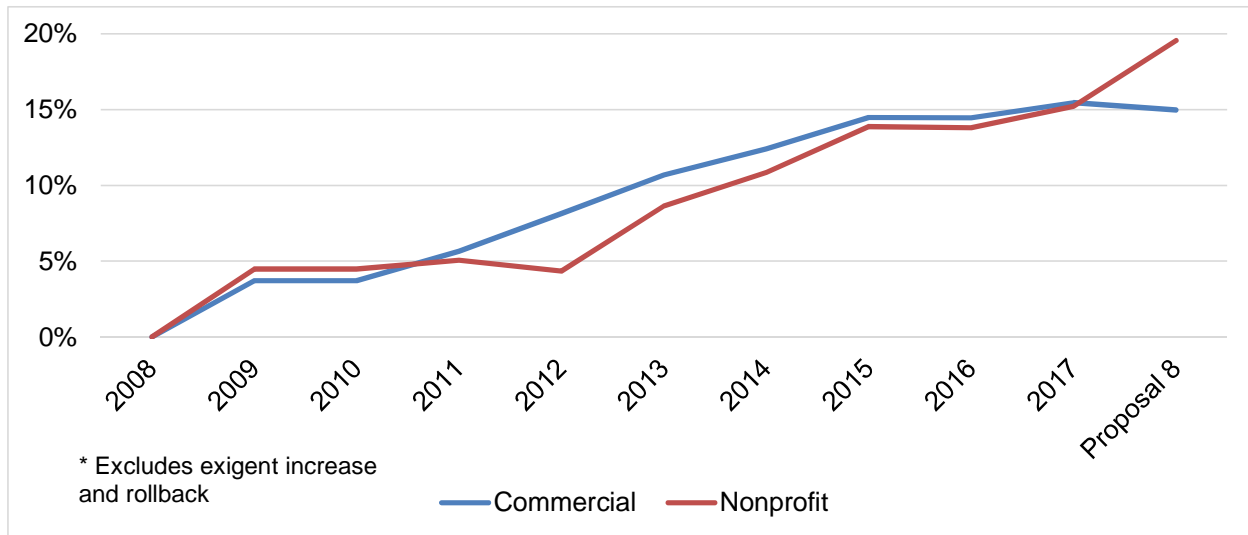
The Postal Service's focus on changes in nonprofit-vs.-commercial rate relationships over the full 17-year period between 2000 and 2017 (USPS Petition at 3-4)

is misplaced for the same reason. Changes between 2000 and 2007 were known to the Postal Service when it persuaded the Commission in R2008-1 to begin applying the 60-percent ratio on a class-wide basis. Yet neither the Postal Service nor any stakeholder (including any commercial mailer) opposed the class-wide application of the 60 percent ratio in R2008-1 or the next Annual Compliance Review, ACR2008.

(2) Nor can a reversal of the 2008 interpretation of Section 3626(a)(6) be justified on the theory that differential between the results of the more aggregated vs. more disaggregated application of the 60 percent ratio has resulted in materially higher price increases for commercial than for nonprofit Marketing Mail *since* R2008-1. As noted above, the cumulative percentage rate increases for nonprofit and commercial Marketing Mail since R2008-1 have been nearly identical. See p. 11, Table 1, *supra*.

(3) Adoption of the current Postal Service proposal would violate one of the fundamental policies of the 2000 legislation: to protect nonprofit mailers from unpredictable rate fluctuations. As noted above, the Postal Service proposal would result in an average price increase of 6.94 percent for ECR nonprofit Marketing Mail and 3.33 percent for regular nonprofit Marketing Mail—in *addition to* any CPI-based price increased taken under 39 U.S.C. § 3622(d). USPS Petition at 5. The Postal Service proposal would result in a much higher cumulative rate increase since R2008-1 for nonprofit mail than for commercial mail: 19.6 percent for the former vs. 15.0 percent for the latter:

**Figure 1**  
**Cumulative Price Increases for**  
**Commercial and Nonprofit Standard Mail Since R2008-1,**  
**Plus Proposal 8**



Source: Library Reference ANM-RM2017-12/1. As the letters from individual nonprofit organizations attached to these comments make clear, these unexpected additional increases would have a devastating effect on nonprofit organizations and their missions at a time when the organizations’ resources are already stretched thin.<sup>5</sup>

The Postal Service, acknowledging that its proposal could produce “rate shock” for nonprofit mailers, asserts that it “would aim” to spread the price increases resulting from a reinterpretation of the statute “over more than one” price-adjustment cycle.” *Id.* The Postal Service does not identify any statutory basis for such a phase-in, however. Section 3626(a)(6) unlike many other provisions of Title 39 since 1970, includes no phasing mechanism. When Congress has wanted to authorize the phasing in of rate changes,

<sup>5</sup> Attached for the Commission’s convenience are the letters separately filed by members of ANM’s board of directors and by Neal Denton, the Executive Director of ANM when the 2000 legislation was negotiated and enacted.



Congress has done so explicitly. See *National Easter Seal Society v. USPS*, 656 F.2d 754, 758-60 (D.C. Cir. 1981).

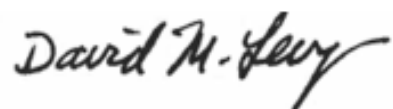
(4) Adoption of the current Postal Service proposal would also make nonprofit price levels more vulnerable to manipulation by the Postal Service in the future. As the Postal Service recognized in R2008-1, regular and ECR mail no longer exist as subclasses within Marketing Mail. Implementation of the current Postal Service proposal would require the creation of artificial or synthetic subclasses, and the computation of rates and volumes separately for each pseudo-subclass and rate change.

Moreover, calculating the 60 percent ratio on the basis of pseudo-subclasses would create continual opportunities for manipulation through changes in classifications, mail preparation requirements, and rate designs. Within recent years, changes in the Domestic Mail Manual—in particular, the implementation and subsequent withdrawal of FSS rates—have shifted billions of pieces from the Carrier Route product to the Flats product and back again. Other changes—e.g., changing piece minimums for Carrier Route Basic Flats or discouraging comailing by reducing the Carrier Route Basic discount—would also shift mail between the proposed pseudo-subclasses, potentially affecting the nonprofit ratio if applied separately to each pseudo-subclass. Application of the ratio at the class level has avoided these opportunities for manipulation.

## CONCLUSION

The Commission should reject Proposal Eight and continue adhering to its 2008 interpretation of 39 U.S.C. § 3626(a)(6).

Respectfully submitted,

A handwritten signature in black ink that reads "David M. Levy". The signature is fluid and cursive, with the first name "David" and last name "Levy" being clearly legible.

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*Counsel for Alliance of Nonprofit Mailers*

September 18, 2017

**Statements from ANM Board Members  
Concerning Effect of Proposal Eight**

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**National President and CEO**

Harold P. Wimmer

September 6, 2017

Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, DC 20268-0001

RE: Docket No. RM 2017-12

Dear Commissioners:

On behalf of the American Lung Association and the 32 million Americans with lung disease that we serve, I am writing to urge the Postal Regulatory Commission to keep the current system for calculating the percentage rate for Nonprofit Marketing Mail.

Since the launch of the Christmas Seals® campaign 110 years ago – the very first direct mail fundraiser – direct mail has been a crucial component of Lung Association's work. Today, direct mail generates over twenty-five percent of Lung Association's income from public donations and remains the single largest source of donation income to the charity. In 2016, Lung Association spent more than \$5 million on outgoing postage (primarily at nonprofit rates) and generated over \$600,000 in first class return postage. Our ability to fulfill our mission is critically dependent on our ability to operate and develop resources efficiently and in a cost-effective way.

We believe that the current system for calculating the percentage of nonprofit marketing mail works. The American Lung Association is not able to increase our budget as fast as the proposed change in the calculation would increase postage costs. Any expense such as postage that exceeds our means will lead to a necessary reduction in our use of mail. Such a reduction will lead to less revenue, limiting our reach and reducing the amount our organization can spend on critical lung health programs and lung disease research funding.

The American Lung Association urges the Postal System to keep the current system, and not make any changes.

Sincerely,



Harold P. Wimmer  
National President and CEO



September 13, 2017

Chairman Robert G. Taub  
Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, DC 20268

RE: Docket No. RM2017-12

Dear Chairman Taub:

Consumer Reports (CR) urges the Commission to disapprove the proposal of the United States Postal Service (USPS) to redefine how the 60 percent ratio between nonprofit and commercial Marketing Mail rates is computed. This adjustment would significantly raise rates for regular nonprofit Marketing Mail by 3.3 percent and Enhanced Carrier Route Nonprofit Marketing Mail by 6.9 percent. This would be in addition to the 2 percent CPI-based increase already planned for January 2018.

For more than eight decades CR has been an independent, nonprofit organization that works side by side with consumers to create a fairer, safer and healthier world. CR's testing and reporting over the past year prompted manufacturers to improve their products. As part of the release of this year's auto issue, CR announced it would start deducting points from any vehicle with a confusing shifter design that lacked safeguards against rollaway, given the number of injuries associated with this design. Duro, the maker of NXR ranges, fixed one of its ranges after CR discovered a safety issue with the oven racks. CR has been calling on manufacturers to make liquid laundry detergent pods safer since they were first introduced in 2012, and was instrumental in getting the industry to agree to packaging changes a few years ago, but will not recommend any laundry detergent packets until we see a meaningful decline in calls to poison control centers.

CR is funded primarily by subscriptions and donations. For every penny increase in the postal rate, CR's mail costs jump by more than \$1,000,000. As we have experienced in the last few years, increased postage costs will force us to curtail the volume of mail we send. Reduced subscriber acquisition and fundraising mail means reduced revenue, and fewer resources to spend on testing consumer products.

Please reject efforts to increase postal rates for nonprofit mailers. The current system for calculating the percentage of nonprofit marketing mail, in place since 2008, works.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Meta A. Brophy'.

Meta A. Brophy  
Director, Procurement Operations

101 Truman Ave.  
Yonkers, NY 10703



September 12, 2017

Robert G. Taub  
Chairman  
Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, DC 20268

RE: Docket No. RM2017-12

Dear Chairman Taub:

The purpose of this letter is to share Easterseals concerns about the United States Postal Service (USPS) request for a technical adjustment that would redistribute postal costs from commercial to non-profit mailers. We understand that this adjustment would raise rates paid by non-profits to up 3.3 percent to 6.9 percent. This increase would be in addition to the 2 percent increase already in place for 2018.

Easterseals provides opportunities for people of all ages with a range of disabilities to achieve their full potential. With a network nationwide, we're proud to serve approximately 1.5 million people with disabilities and their families. From therapy and early intervention services, to camps and employment placement, we help children and adults with disabilities, caregivers, veterans and seniors be at their best as they live, learn, work and play. For every penny increase in the postal rate, Easterseals mail costs jump by more than \$500,000. These are funds that would otherwise go to help children and adults with disabilities get the services and supports they need to be independent and successful in life. We also are concerned that new costs will force us to curtail the volume of mail we send and that this reduction will only compound over time.

Every year, more people come to Easter Seals for help that is supported with charitable contributions. These contributions have been secured in large part through mail-based campaigns. The USPS is an essential partner in our meeting our mission. Please reject efforts to increase postal rates for non-profit mailers.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink that reads "Katherine Beh Neas".

Katherine Beh Neas  
Executive Vice President, Public Affairs

September 15, 2017

Postal Regulatory Commission  
901 New York Avenue, N.W., Suite 200  
Washington DC 20268

Re: Docket No. RM2017-12, *Periodic Reporting (Proposal Eight)*

Dear Chairman Taub and Members of the Commission:

Please accept this letter as the comments of Guideposts in this rulemaking. Guideposts respectfully requests that the Commission reject Postal Service Proposal Eight.

Guideposts is a nonprofit organization, headquartered in Danbury, Connecticut, that is dedicated to providing hope, encouragement, and inspiration to millions of people across America and the world. Through uplifting magazines, books, websites, a prayer network, and outreach programs, Guideposts helps people deepen their faith and inspires them to reach their true potential by enabling readers to read inspirational stories, request a prayer, pray for others, share an uplifting story, and connect with like-minded Guideposts readers, volunteers, and donors who share a sense of faith and belief in the human spirit.

Guideposts spends approximately \$17,500,000 in postage during a fiscal year. Most of this spending is on nonprofit Marketing Mail. Given the demographics of our donor base and the nature and mission of our support efforts, email and the Internet have proven to be ineffective substitute channels for raising donations and delivering the kind of spiritual support we seek to provide.

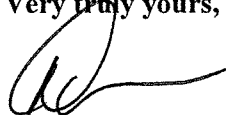
Our operating environment has become increasingly difficult in recent years. Since 2007, the lingering impact of the economic downturn and the ever increasing costs of acquiring new donors have caused our active fundraising donor file to fall by over 40 percent. Over the same period, new donor acquisition mail volume has fallen by roughly 50 percent. At the same time, the cost of postage has continued to rise. Last year, for example, we experienced a four percent increase in the average rates that we must pay for the nonprofit Standard mail letters that we rely on.

These trends have forced Guideposts to take painful steps to survive. These steps have included reductions in staff head count, salary cutbacks for all employees, and reductions in salary increases. We have also been forced to reduce the volume of our acquisition mailings to offset the rising cost of postage. Our annual postage spending in 2007 was approximately \$23,350,000 in 2007 dollars. In 2017, the figure will be only about \$17,500,000—in 2017 dollars.

Proposal Eight would compound the financial pressures on Guideposts. The Postal Service stats that adoption of its proposal would require that Regular Nonprofit rates increase on average by 3.33 percent more than the CPI. This larger increase would force Guideposts to scale back our acquisition mailings even further, and reduce the volume of our promotional mailings for our new publications.

The Postal Service has suggested that it might be willing to mitigate the rate shock from its proposal by phasing in the resulting price increases over two or more rate cycles. But phasing would give us little relief. Guideposts plans acquisition and direct mail mailings well in advance. Knowing a significant rate increase is impending would still cause us to scale back our mail volume even if the full increase did not take effect in the first year.

Very truly yours,



David O'Sullivan  
Postal Affairs Manager  
Guideposts





## NATIONAL CATHOLIC DEVELOPMENT CONFERENCE

734 15th St. NW Suite 700 | Washington, DC 20005-1002  
tel.202-637.0470 | fax.202.637.0471 | toll free 888.TRY.NCDC (879.6232)  
[www.ncdc.org](http://www.ncdc.org)

September 12, 2017

Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, DC 20268-0001

RE: Docket No. RM 2017-12

Dear Commissioners:

I am writing on behalf of the hundreds of charities that the National Catholic Development Conference represents as well their beneficiaries, clients, and constituents. These charities depend heavily on the U.S. Mail to raise funds and communicate with their supporters.

We believe that the current system for calculating the percentage of nonprofit Marketing Mail works. Our members are not able to increase their already extremely tight budgets as fast as the proposed change in the calculation would increase postage costs. Any expense such as postage that exceeds their limited means will lead to a necessary reduction in their use of mail. If they are obliged to reduce mailing, their revenue will suffer immediately and they will be forced to reduce their services and possibly close some of their programs. In the end, it will be those who have the least among us who will suffer the most.

Increases in postage to this degree will lead these charities to reduce the main elements of their missions of care for the most vulnerable in our society: those who are poor; those who are homeless; those who are hungry; those without clothing or even shoes; those without healthcare; children, who have been abandoned and abused; those who are elderly; those who are homebound; and those who are unschooled.

Please do not change the current calculation system that was implemented by the Postal Service ten years ago.

Very Truly Yours,

A handwritten signature in blue ink that reads 'Sister Georgette Lehmuth' followed by a small monogram.

Sister Georgette Lehmuth, OSF  
President and CEO



**National Wildlife Federation**

11100 Wildlife Center Drive • Reston, VA 20190-5362 • 703-438-6000

September 14, 2017

Postal Regulatory Commission  
901 New York Avenue, N.W., Suite 200  
Washington DC 20268

Re: Docket No. RM2017-12, *Periodic Reporting (Proposal Eight)*

Dear Chairman Taub and Members of the Commission:

My name is Sandra Miao. I am Director of Membership for the National Wildlife Federation ("NWF"). This letter provides the comments of NWF in this case. For the reasons explained here, NWF respectfully requests that the Commission reject the Postal Service Proposal Eight.

NWF is a charitable organization exempt from federal income tax under Internal Revenue Code Section 501(c)(3), and is headquartered in Reston, Virginia. NWF's mission is to unite all Americans to ensure that wildlife thrive in a rapidly changing world. Since 1936, the NWF has joined with people across the country to share knowledge and resources in a common effort to protect wildlife, special places, and natural resources. Protecting these resources is a cause that has long united Americans from all walks of life and political stripes. All Americans, regardless of location, depend on clear air, clean water, and a healthy environment. NWF takes pride in defending those needs.

NWF's past and current efforts have involved saving wetlands, creating wilderness areas, and protecting wildlife habitats, encouraging children to be active outdoors, and finding solutions to the climate crisis.

NWF's wildlife preservation efforts include dealing with warming climate, protecting endangered species, containing the spread of invasive species, creating safe corridors for wildlife, keeping common species common with state wildlife action plans, restoring bison to the Great Plains and advancing red wolf recovery.



Uniting all Americans to ensure wildlife thrive in a rapidly changing world.

nwf.org

NWF works to protect, maintain and restore healthy habitats around waters, coasts and floodplains, gulf restoration, public lands, tribal lands, forest and farms. NWF advocates for federal and state policies that will improve wildlife conservation on hundreds of millions of acres of public, tribal and private lands, including thousands of miles of streams, rivers, lakes and coastlines. NWF also encourages Congress to appropriate adequate funds for natural resources and encourages federal agencies to include climate science in their wildlife conservation management plans. By supporting wildlife conservation, including habitat protecting, NWF seeks to save thousands of species, protect biodiversity, and avoid expensive emergency recovery measures.

Connecting people with nature is an increasingly important mission for NWF. NWF connects Americans adults and children to the outdoors through Garden for Wildlife™, Eco-Schools USA environmental education initiative, Earth Tomorrow®, and many other programs.

NWF is also committed to fighting climate change, the greatest current threat to American wildlife, wild places and communities. Failure to arrest global warming could cause breeding ground for ducks in the American heartland to dry up, moose in New England to be lost to parasites, western forests to burn more often, and Appalachian streams to become inhospitable to trout. NWF is working to reduce greenhouse emissions throughout the country by promoting a rapid transition to clean energy. NWF also works with farmers and ranchers to adopt agricultural practices that protect wildlife, reduce emissions, and store carbon.

Mail plays a vital role in NWF's mission. We rely on direct mail to raise money and awareness. NWF mails 46,000,000 pieces of direct mail annually, mostly at nonprofit Marketing Mail rates.

The last few years have been especially difficult for NWF. Between 2012 and 2016, NWF's overall revenues decreased each year by an average of nearly five percent. Financial pressures have forced NWF to cut or limit staff, reduce program activities, and limit our publication and direct mail volume.

Adoption of Postal Service Proposal Eight would badly harm NWF and its nonprofit mission. The Postal Service acknowledged that the proposal would cause regular nonprofit Marketing Mail rates to increase by 6.9 percent above the Consumer Price Index. An increase of this magnitude would force NWF to reduce the quantity of mail for its fundraising appeals and switch to alternative channels of fundraising. This would greatly impair NWF's effectiveness:

direct mail fundraising still reaches many households more effectively than alternative channels such as telemarketing and the internet. Increases in postage thus could impair the cleanliness, safety, and beauty of the outdoors and its wildlife for future generations.

Phasing over several years the rate increases required by the proposal would merely delay but not eliminate the impairment of NWF's mission, and the harms to those who work and make it their life goal to better the world for wildlife. In the end, government spending to protect wildlife, public lands, and the environment would need to increase to offset the diminished effectiveness of NWF and other conservation organizations. This would have drastic effects for our environment, wildlife and America.

Very truly yours,

A handwritten signature in cursive script that reads "Sandra Miao". The signature is written in black ink and is positioned above a horizontal line.

---

Sandra Miao

National Wildlife Federation

Wounded Warrior Project  
4899 Belfort Road, Suite 300  
Jacksonville, Florida 32256

904.296.7350

904.296.7347



RECEIVED

2017 SEP 15 P 3:58

September 13, 2017

VIA UPS NEXT DAY AIR SAVER

Postal Regulatory Commission  
901 New York Avenue NW, Suite 200  
Washington, DC 20268-0001

RE: Docket No. RM 2017-12

Dear Commissioners:

Wounded Warrior Project, Inc. ("WWP") respectfully urges you to reject the United States Postal Service ("USPS")'s proposed increases to the nonprofit standard mail rate. This increase would siphon much-needed resources away from our ability to offer live-saving programs and services. It would also affect our ability to reach warriors and donors, ultimately disincentivizing use of the mail.

As background on our organization, WWP has existed since 2003 with a vision to foster the most successful, well-adjusted generation of wounded veterans in our nation's history. We offer a wide variety of services, filling critical gaps where government programs leave off. We connect injured veterans, service members, and their caregivers with each other and their communities. We serve them by providing physical and mental health offerings, job placement services, and benefits help. Finally, we empower them to live life on their own terms.

The need we fill is great and growing. As the post-9/11 generation of injured veterans and service members begins to age, their health challenges are in many cases becoming even more acute. This is particularly true with regard to the unseen injuries of war, such as post-traumatic stress disorder and traumatic brain injury, which may not fully materialize until years after injury. We believe that this generation's need for services will not peak for many years, despite waning public attention and support.

We must carefully budget to meet this need – and every dollar we spend on postage is one we cannot use to provide for our Nation's Wounded Warriors. The rate increases under consideration will have a real and substantial impact on the amount we can spend on programs and services.

Like many nonprofits, WWP relies heavily on the mail to disseminate our message to supporters, veterans, and service members. Despite trends towards online communication, we find that many of our supporters prefer to receive messages by mail; they enjoy the act of opening a letter and are simply more comfortable using the mail than other modes of

DUTY ★ HONOR ★ COURAGE ★ COMMITMENT ★ INTEGRITY ★ COUNTRY ★ SERVICE

communication. Because of discounted, predictable nonprofit rates, we are able to accommodate that preference. Ultimately, though, rate increases may push WWP towards other communication methods. I'm sure the same is true of other of USPS's loyal customers.

Thank you very much for your consideration of this letter, and please do not hesitate to contact us if we can provide additional information.

Sincerely,



Lt. Gen. Michael S. Linnington (ret.)  
Chief Executive Officer  
Wounded Warrior Project, Inc.



**Comments of  
Neal Denton,  
Senior VP, Chief Government Affairs Officer,  
YMCA of the USA**





September 15, 2017

Postal Regulatory Commission  
901 New York Avenue, N.W., Suite 200  
Washington DC 20268

Re: Docket No. RM2017-12

Dear Chairman Taub and Members of the Commission:

I am writing to express my opposition to the proposal of the Postal Service to change the formula adopted by the Commission in R2008-1 for implementing 39 U.S.C. § 3626(a)(6), which requires that rates be set so that the estimated average revenue per piece from nonprofit Marketing Mail equals, as nearly as practicable, 60 percent of the average revenue per piece from commercial Marketing Mail.

I write from two perspectives. The first is as Senior Vice President and Chief Government Affairs Officer of the YMCA, a position I have held since 2012. The YMCA, like many other nonprofit organizations, relies on nonprofit Marketing Mail to raise funds and communicate with members, donors, and the communities we serve. The sizeable and unexpected increases in mailing costs that would result from the USPS proposal would reduce the resources available for our nonprofit mission.

You will probably receive many letters and comments from other nonprofit organizations on this point, however. So I want to focus on the USPS proposal from a second perspective. As you know, I was Assistant Director and then Executive Director of the Alliance of Nonprofit Mailers from 1986 through 2005. I personally represented ANM in negotiating and obtaining Capitol Hill and industry support for the draft legislation that culminated in the enactment of Section 3626(a)(6) in 2000. I hope that my perspective



may be useful as the Commission reviews the Postal Service's current proposal.

The Revenue Forgone Reform Act of 1993 required that nonprofit Third-Class rates be set so that their average markup over the costs attributable to nonprofit Third-Class mail would be one-half the average markup of commercial Third-class rates over the attributable costs of commercial Third-Class mail. By the late 1990s, there was general agreement that this formula, known as the 50-percent markup rule, was unworkable. The Postal Service's attributable cost data for nonprofit mail and other preferred rate mail had become unreliable, and application of the statutory markup to the increasingly erratic data threatened preferred rate mailers with increasingly wide and unpredictable fluctuations in preferred postal rates.

In 2000, I joined with others to begin discussions with good friends on Capitol Hill and representatives of the Postal Service and with other mailer groups to discuss a possible legislative fix to this problem. For most of the preferred rate subclasses, the solution was straightforward: nonprofit rates could be set by applying a uniform (except for rounding) discount percentage to the corresponding commercial rates. This approach was not practical for nonprofit Standard Mail, however, because, for any Standard Mail mailpiece with a given set of billing determinants, the average nonprofit rate was about 25-27 percent less than the average commercial rate. Simply applying a discount of this magnitude to each Standard Mail rate element would yield a nonprofit rate structure with worksharing discounts that were markedly below cost avoidances. Accordingly, the parties agreed instead on a different approach for Standard Mail. For this mail, rates would be set so that the average revenue per piece of each nonprofit subclass would be about 40 percent below the average revenue per piece of "the most closely corresponding regular-rate subclass." A discount of 40 percent in average revenue per piece yielded an effective discount of about 25-27 percent after accounting for the different mail mix of nonprofit mail. This approach was enacted into law at Pub. L. No. 106-384, and codified at 39 U.S.C. § 3626(a)(6). (I keep a copy in my den.)

All of the parties to the negotiations understood that this approach, unlike the discount formula adopted for the other preferred rate categories, could result in effective rate preferences that might widen or narrow as the mixes

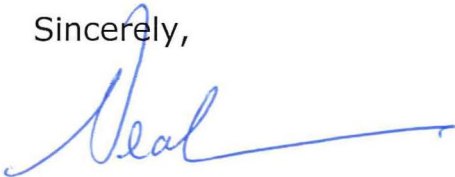
of mail within nonprofit and commercial Standard Mail diverged over time. But we recognized that this possibility was a reasonable price to pay for a statutory formula that insulated nonprofit Standard Mail from the vagaries of nonprofit-specific attributable cost estimates while allowing for worksharing discounts that reflected the full costs avoided by worksharing.

We were all grateful to legislators and staff because the 2000 formula was well-designed to protect nonprofit Standard Mail rates from large and unpredictable rate swings, and to do so through a formula that could not be manipulated by the Postal Service.

It's been some years since that compromise was crafted, but I was still a bit surprised when I reviewed the Postal Service's July 31 petition in this docket. The USPS appears to be reversing the working interpretation of Section 3626(a)(6) that was proposed by the USPS and approved by the PRC without opposition from commercial mailers in R2008-1 after the Postal Accountability and Enhancement Act of 2006 eliminated regular and ECR mail subclasses of Standard Mail. The current interpretation has achieved the goals of the 2000 legislation without any significant divergence between nonprofit and commercial Standard Mail rates since R2008-1.

I respectfully suggest that the approach to setting rates for nonprofit, preferred rate mail, now advocated by the Postal Service in RM2017-12, would be inconsistent with the legislative goals and intent of the 2000 legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neal", with a long horizontal flourish extending to the right.

Neal Denton, CAE  
Senior Vice President, Chief Government Affairs Officer  
YMCA of the USA